IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 27511 of 2005(A)

AGAINST THE ORDER IN EP.66/01 IN
OS.664/1991 of SUB COURT, PALA

.....

PETITIONERS:

---

1. ELSON MANI, S/O.MANI,
   AGED 39 YEARS, ROSE COTTAGE, CHOLATHADAM,
   POONJAR, KOTTAYAM.

2. A.M.VARGHESE, S/O.ELSON MANI,
   AGED 53 YEARS, DO. DO.

3. MRS.ROSILY VARGHESE,
   W/O.A.M.VARGHESE, AGED 40 YEARS, DO. DO.

4. MRS.ANNAMMA MANI, W/O.MATHEW MANI,
   AGED 78 YEARS, ANIKKASSERY HOUSE, CHELADU P.O.,
   KOTHAMANGALAM.

BY ADV. SRI.S.RAJKUMAR

RESPONDENTS:

ITTICHAN JACOB, S/O.B.V.ITTICHAN,
AGED 60 YEARS, PAYYAPPILLY HOUSE,
THIRUVANKULAM, ERNAKULAM.

BY ADV. SRI.T.I.DANIEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C) No.27511 of 2005

- -

Dated: 30th May, 2007

JUDGMENT

Ext.P1 sale proclamation approved by the execution court is under challenge in this proceeding under Article 227 of the Constitution initiated by the judgment-debtors who are the owners of the property. This court while granting stay imposed a condition that a sum of Rs.20,000/- shall be remitted before the execution court within one week. While Mr.T.I.Daniel, counsel for the respondent submits that the petitioner has not complied with the above said condition, Mr.S.Raj Kumar, learned counsel for the petitioners asserts that the deposit was made before the court below within the stipulated time itself. The ground which is prominently raised and urged by Mr.Raj Kumar is that the upset price of Rs.4 lakhs fixed by the court below is far below the market price of the property which will be at least Rs.12 lakhs. The property, it is submitted is 4 acres of rubber plantation. If the property is 4 acres of yielding rubber plantation as submitted by the counsel, then his case that the value of the property will be at least Rs.12 lakhs is not improbable. But at the same time it is the duty of the execution court to ensure that the decree-holder secures the fruits of the decree which was passed

years ago at the earliest. Under these circumstances, I am of the view that there is no justification for the indefinite continuance of the order of stay presently passed. Accordingly, the Writ Petition will stand disposed of issuing the following directions:

The order of stay presently passed will continue for a period of five more months from today only. During this period it is open to the petitioners to identify a purchaser for a portion of their property who will pay a price necessary for liquidating the decree debt in full. Once the petitioners identify the purchaser, they shall report the matter to the court below which will permit them with notice to the respondent-decree-holder to sell the property to that purchaser. The court below will ensure that the sale consideration paid by the prospective purchaser is paid by him towards the credit of the decree debt. The order of stay will not continue at any rate beyond the period of five months since this court will not be justified invoking the discretionary jurisdiction under Article 227 of the Constitution in favour of a judgment-debtor who notwithstanding ownership and possession of a valuable property has not paid off the debt.

srd **PIUS C.KURIAKOSE, JUDGE**